

Wake  
Forest

Volume 28, Number 1  
December 1997

# Jurist

*The Magazine of Wake Forest University School of Law*



## **Undercover reporting**

*The law and surreptitious newsgathering*

PAGE 8

**Cover:** ABC News attorney Bill Jeffress stands outside a federal courthouse in Greensboro, North Carolina, last January with ABC producers Susan Barnett, center, and Lynne Dale, who worked together to produce ABC's segment on Food Lion. A jury ordered ABC to pay Food Lion more than \$5.5 million for sending two reporters undercover with cameras in their wigs for an exposé accusing the supermarket chain of selling spoiled meat. (Wide World Photos)

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# Jurist

The Magazine of Wake Forest University School of Law

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F E A T U R E

## Masked Media

*by David A. Logan*

Simultaneously protecting targets of surreptitious news-gathering and the public's right to know can be a complicated issue, as the ABC-Food Lion case demonstrated so dramatically. A noted First Amendment scholar offers some observations and suggestions.

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F E A T U R E

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*by Ellen Dockham*

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# Dean's Column

**W**E ARE FORTUNATE to be part of a great university. The last paragraph of our mission statement states: "In all courses teachers stress legal analysis and critical thinking, *and they encourage students to consider the social and economic settings in which legal principles and rules operate* and the ways in which lawyers use those principles and rules in practice" (emphasis added). At orientation this fall, our distinguished alumnus, Larry Sitton of Greensboro (JD '64), indicated that what made his life as a litigator so interesting was that each case had a different factual setting in myriad disciplines. In encouraging our students to consider the social and economic settings in which legal principles operate, our law school program is greatly enhanced by being part of Wake Forest University. Increasingly, our faculty are interacting with other units of the university.

Interdisciplinary interaction takes place on both campuses of Wake Forest University. At the Bowman Gray campus of the Wake Forest University School of Medicine, our Legal Clinic for the Elderly was founded in 1991 with physical location in the medical school complex. As part of the J. Paul Sticht Center on Aging, the Legal Clinic for the Elderly has been a partner in a network to deliver better, comprehensive care for older citizens. Medical and legal issues often overlap for older clients. In our clinic, law students join a multidisciplinary team, including faculty from the Departments of Internal Medicine, Neurology, and Psychology, together with social workers and nurses.

A second formal link with the medical school began in 1993, when Mark Hall joined our faculty from the faculty of the Arizona State College of Law. Professor Hall has a joint appointment with tenure in both the law and medical schools as a Professor of Law and Public Health. He is one of the preeminent health law teachers and scholars in the country. Professor Hall has offices on both campuses. He teaches Health Law and Law and Medicine at the law school, and is also a link to the Babcock Graduate School of Management, teaching a course to management students on Health Regulation.

Of course, we share our wonderful new building with the Babcock Graduate School of



**"We are fortunate  
to be part of a  
great university."**

Management, strengthening our upper class elective program for those who want to practice in the business law area by interactions with our management colleagues.

First of all, we have a joint JD/MBA program which has grown until we now have 24 JD/MBA students, approximately five percent of our student body. Moreover, with the approval of both faculties, candidates for only the JD degree can take four of their 89 credits toward graduation from an approved list of courses in the Babcock school. We also have a joint Law and Economics course taught by Professor Fred Harris of the business school with Professor Marion Benfield of the law school. Students in Dean Ralph Peeples'

Dispute Resolution course have met for several sessions with a class from the management school to conduct joint exercises, forming competing teams to negotiate business deals or settle business litigation. We have also had extracurricular programs for both student bodies concerning Doing Business in Russia, the Products Liability Explosion, and the Gender Glass Ceiling. A new development this year is the first joint appointment between the law school and the Babcock school. This fall, Professor Steve Nickles became the C.C. Hope Chair in Financial Services and Law with tenure in both schools.

Finally, we have added another distinguished chairholder, Professor Michael Perry, who came to us from a chair at the Northwestern University School of Law. Michael Perry is an internationally renowned scholar-teacher in the areas of Constitutional Law, Law and Morality, and Law and Religion. He envisions interaction with most of the other components of the university, including the Divinity School, and the Departments of Philosophy, Politics, and Religion of the college.

In embarking on these interdisciplinary endeavors, the law school is not neglecting traditional courses nor forsaking its strengths in such areas as trial advocacy. But in the best traditions of a liberal arts legal program, these links are helping to better prepare our graduates to think like lawyers in an increasingly interdisciplinary world. ■

**Robert K. Walsh**  
DEAN

## Ideal bedfellows

*Legal Clinic for Elderly moves into Sticht Center on Aging*

**T**HE AFFINITY OF two Wake Forest programs for the elderly—one conducted by the School of Law, the other by Wake Forest University Baptist Medical Center—has been enhanced by the move this past summer of the Legal Clinic for the Elderly into the J. Paul Sticht Center on Aging and Rehabilitation.

Recognizing that medical problems often have physical, social, and psychological consequences, the Sticht Center brings a multidisciplinary approach to dealing with the problems of North Carolina's aging population. In addition to four inpatient care units, it houses rehabilitation facilities, educational services, social workers, and a department of geriatric psychiatry.

Kate Mewhinney, an associate clinical professor at the law school, directs the Legal Clinic for the Elderly and oversees the ten second- and third-year law students who work there each semester. She enthusiastically endorses the Center's holistic approach to dealing with the problems facing the elderly.

"The basic concept behind the Sticht Center is that aging issues should not be dealt with in a narrow medical model, because there are a lot of other disciplines that have a lot to offer," she says. "When an elderly person is sick, it relates to many different issues, such as where they can live, what kind of medical care they should receive, and who should make decisions if they lose capacity. The belief in designing the Sticht Center was that if you put the different people who work on different pieces of that together, they will do a better job. I am absolutely convinced this is true."

Thus far, the partnership is proving successful. The Medical Center furnished the clinic and provides space at no charge. In return, legal clinic students provide the Sticht Center's clients with legal advice on living wills, guardianship, nursing homes, and other issues.

"The legal issues and the medical issues definitely overlap," says Mewhinney.

The clinic students also benefit from the partnership. "It's very difficult to get the level of medical expertise that we can get [at the Center]," Mewhinney notes. "We have nationally known geriatricians teaching some of the classes



**HELPING OUT:** THIRD-YEAR STUDENT LYDIA HOZA TALKS WITH A CLIENT AT THE STICHT CENTER.

**'The legal issues and the medical issues definitely overlap.'**

and consulting with us on cases. This is an incredible opportunity for them."

At its new facility, the Legal Clinic for the Elderly has office space, a library, and client conference rooms. Under Mewhinney's direction, ten students each semester spend two hours a week in class examining legal issues facing the elderly; they work with clients for an additional eight hours a week. In addition to Sticht Center patients, the clinic serves low- to moderate-income elderly persons in Winston-Salem.

"We start the students with basic problems," Mewhinney explains, "so they can focus more on interview dynamics." As the semester progresses, the students are able to work on medical issues, wills, guardianship, and consumer problems.

"For students who want a general civil law experience, this is a good place to work, because they can learn how to do basic planning documents, wills, and consumer issues," says the manager. "They can also gain experience working with clients." Students take disputes that cannot be resolved without litigation to mediation and trial. ■



### Faculty Notes

**Carol Anderson** received the 1997 Justice Joseph Branch Excellence in Teaching Award.

**Michael Curtis** contributed a chapter to *Slavery and the Law*, published by Madison House.

**David Logan**'s article entitled "Masked Media: Judges, Juries and the Law of Surreptitious Newsgathering" has been accepted for publication in the Iowa Law Review.

**Kate Mewhinney** was a facilitator for several sessions at the 1997 Association of American Law Schools Clinical Section meeting.

**Joel Newman** made a presentation at the N.C. Bar Foundation Ethics for Litigators Seminar in Greensboro on October 4. He also spoke on "Ethical and Professional Responsibility Issues Encountered by Tax Practitioners" in June for a tax workshop sponsored by the North Carolina Bar Foundation.

**Ralph Peebles** submitted a proposal entitled "An Evaluation of Court-Ordered Mediation of Medical Malpractice Cases in North Carolina" that has received supplemental support from the Robert Wood Johnson Foundation.

**Michael Perry** has signed a contract with the Oxford University Press to publish a book he is now writing entitled *What Is The Constitution? The Supreme Court, the Fourteenth Amendment, and the Judicial Usurpation of Politics*. His next book, *The Idea of Human Rights*, is scheduled for publication in January.

**Suzanne Reynolds** and her husband Hoppy Elliott ('77) successfully ran and completed The New York City Marathon in October.



ROSE

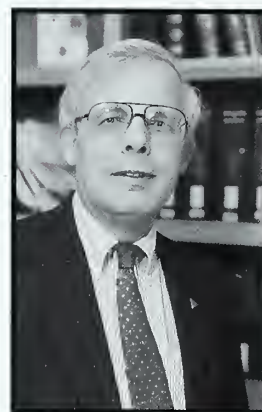
**Simone Rose**'s article entitled "Will Atlas Shrug? Anti-Dilution Protection for Famous Trademarks" has been published by the Florida Law Review.

**Thomas M. Steele** has been elected to the Council of the Law Practice Management Section of the North Carolina Bar Association for 1997-98.



TAYLOR

**Margaret Taylor**'s article entitled "Promoting Legal Representation for Detained Aliens: Litigation and Administrative Reform" has been published by the Connecticut Law Review.



WALKER

**George Walker** has been named a vice president of the North Carolina Bar Association. He co-drafted three bills, including provisions for international conciliation and amendments for the rules of civil procedure and the state's International Commercial Arbitration Act, that passed in the 1997 North Carolina General Assembly. He has published "Oceans Law, the Maritime Environment, and the Law of Naval Warfare," a chapter in *Protection of the Environment During Armed Conflict*, Volume 69 of the International Law Studies series published by the Naval War College Press.

**Robert K. Walsh** has been elected vice chair of the ABA Council for the Section of Legal Education and Admissions to the Bar. He previously chaired the two major committees of the Section, the Accreditation Committee and the Standards Review Committee. He completed his duties as Chair of the Standards Review Committee last summer with the adoption by the ABA House of Delegates of the first new set of Standards and Interpretations for the Approval of Law Schools in almost a quarter of a century.

## A death in the family

*Longtime faculty member Robert E. Lee dies*

**R**OBERT E. LEE, professor emeritus and former dean of the Wake Forest School of Law, died in Winston-Salem August 21. He was ninety.

A native of Kinston, North Carolina, Lee earned bachelor's and law degrees from Wake Forest in 1928 at the age of twenty. During his long career at the University, which extended from 1946 until his retirement in 1977, he was known as a challenging but engaging teacher, as well as a highly respected legal writer and a renowned expert on family law.

As dean of the School of Law from 1946 to 1949, Lee was responsible for rejuvenating the school after World War II, when it had merged with Duke University's law program due to lack of faculty and students. His tenure saw a huge increase in enrollment; in 1948 the school turned away qualified applicants for the first time in its history.

During his thirty-one years as a professor, Lee earned a reputation as an inspired lecturer, known for the colorful anecdotes he used in class. He was also a demanding teacher; his early years at the school were referred to as the "Reign of Terror" due to the highly technical questions he asked in class and on exams.

Wake Forest law professor Rhoda Billings (JD '66) recalls that Lee's teaching style influenced the entire law school. "That approach to teaching, which demanded from the students intense preparation and the ability to respond to pointed questions in class... was pretty much the mark of Wake Forest law school at the time I arrived in the early sixties," she said.

Lee already had considerable experience when he came to work at Wake Forest in 1946. He served on the faculty of Temple University for sixteen years, beginning when he was just twenty-two. He also taught briefly at the U.S. Army



**ROBERT E. LEE:** HE WAS A DEMANDING TEACHER AND A NOTED FAMILY LAW EXPERT.

**As dean, Lee was responsible for rejuvenating the school after World War II. As a professor, he was known as an inspired lecturer.**

University in Shrivenham, England. He completed his undergraduate and law degrees at Wake Forest in four years and was admitted to the bar one day before his twenty-first birthday. He went on to earn degrees from Columbia and Duke, and studied at New York University and the University of Pennsylvania.

While he was a student at Wake Forest, he was an associate editor of *The Student* magazine, managing editor of *Old Gold and Black*, and president of his senior class. He bolstered his income by selling bound versions of his law professors' lectures to his fellow students for \$20 a volume.

Outside of the classroom, Lee was a prolific writer on legal issues. Continuing his undergraduate practice of assembling written versions of lectures, he published a bound course pack for each of his classes. His syndicated column, "This Is The Law," ran for twenty-five years. Most significantly, he published 18 books, includ-

ing a four-volume treatise on family law in North Carolina that is his best-known work.

Billings says Lee's writings on family law were considered authoritative in the field. "It was the bible of family law," she says. "Everyone who practiced family law had it and referred to it." Billings also credits Lee's newspaper column with helping the public understand legal intricacies. "His column popularized the law and made it accessible to the people."

Lee didn't always write about the law. In 1974 he wrote a biography of Blackbeard the pirate, which is still one of the few comprehensive portraits of the famous historical character. The biography received renewed attention last November when a private research company claimed to have found one of Blackbeard's ships off the coast of Beaufort, North Carolina.

Lee's expertise in family law led to accolades. In 1975 he was one of five Americans asked to speak at the First World Conference of Family Law in Europe. ■



### Silver and golden

*Partners' Program shines at quarter-century celebration*

**S**UMMONED BY silver anniversary invitations, Wake Forest School of Law donors and volunteers gathered at the end of September to celebrate a quarter-century of partnership between alumni, friends, and the University.

"Twenty-five years ago, the law school did not have any type of recognition program. The Partners' Program developed as a way to recognize donors," remarked Assistant Vice President of University Advancement Julius Corpening, who was involved in the establishment of the program.

The first Partners' Banquet, held in a small downstairs room at the old Hilton Hotel in 1972, was attended by fewer than fifty people. This year's banquet at the Forsyth Country Club drew more than 200 partners and volunteers.

The Partners' Program has made impressive strides over the years. Its first year, about \$100,000 was contributed to the Law Fund. For each of the last eleven years, more than \$1 million has been raised.

Partners generally contribute at least \$250 a year to the Law Fund, although recent graduates can qualify for the Partner level on a graduated scale. Those who donate \$500 or more annually are recognized as Managing Partners, Senior Partners, or Dean's Associates.

Since the Partners' Program began in 1972, more than \$6 million in operating support has been contributed to the law school, the equivalent of \$120 million in endowment. Additionally, over \$10 million has been contributed directly to the law school endowment.

Forty percent of the money raised through the Partners' Program goes to fund student scholarships. In recognition of this fact, ten scholarship students were invited to this year's banquet and met the donors who funded their scholarships.

Law School Associate Dean James Taylor has worked with the Partners Program for over ten

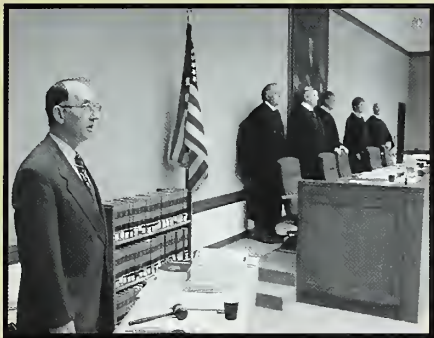


**TOP:** TOGO WEST, SECRETARY OF THE ARMY, WAS THE GUEST SPEAKER AT THE PARTNERS' BANQUET. **ABOVE:** TOGO WEST WITH ASSOCIATE DEAN JAMES TAYLOR AND VISITORS' BOARD MEMBER RUSSELL TWIFORD.

**Partners have contributed more than \$6 million to law school support.**

years. "Each year, I am once again astonished at the loyalty of Wake Forest graduates," he said. "Their support is incredible. The manifestation of this is the Partners' Banquet each year, where we can come together and celebrate that kind of support." ■





**Appellate judges prepare for hearing.**

### Court of Appeals

**C**HIEF JUDGE WALTER COX and judges Eugene Sullivan, Susan Crawford, Sparky Gierke, and Andrew Efford of the United States Court of Appeals for the Armed Forces, heard oral arguments in the case of *U. S. v. DuBose* at the law school in October. Third-year student Phillip Feiner filed a brief and argued as *amicus curiae*.

### PILO auction

**D**URING OCTOBER, the Public Interest Law Organization (PILO) held its annual auction of goods and services donated by members of the law school and Winston-Salem communities. The \$8,002 raised will be used to fund law students who accept volunteer public interest jobs next summer.

### Stanley Competition

**O**NE-HUNDRED-SIX SECOND- and third-year students participated in the annual Stanley Moot Court Competition. James Martin defeated Tina Lloyd in the finals, which were judged by The Hon. Susan Black, U.S. Court of Appeals, 11th Circuit; The Hon. Elizabeth Lacy, Justice, Virginia Supreme Court; and The Hon. Carl Stewart, U.S. Court of Appeals, 5th Circuit.

### Trial bar

**A**NDRE WIGGINS won the First-Year Trial Bar Competition in October. The final round was judged by Magistrate Judge P. Trevor Sharp.

### North Carolina Court of Appeals

**T**HE NORTH CAROLINA Court of Appeals heard oral arguments at the law school in September. Judges Sidney S. Eagles Jr., John C. Martin, and Patricia Timmons-Goodson presided over arguments in three appellate cases.

### Race Judicata

**I**N SEPTEMBER, the Student Bar Association (SBA) sponsored the law school's annual Race Judicata, during which fifty students participated in a 5K run. The event raised over \$500 for the Association for Retarded Citizens/Community Access for Everyone (ARC/CARE).



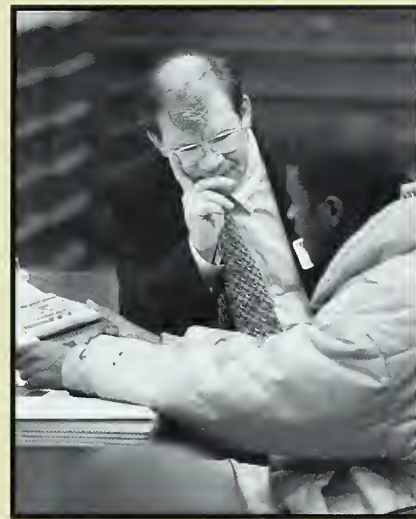
**Elder law expert Cynthia Barrett**

### Elder law speaker

**I**N OCTOBER, Women in Law (WIL) sponsored a lunch-time lecture featuring prominent elder law attorney Cynthia Barrett, who spoke on issues she has faced in her practice and the role of elder law attorneys in the future.

### Law telethon

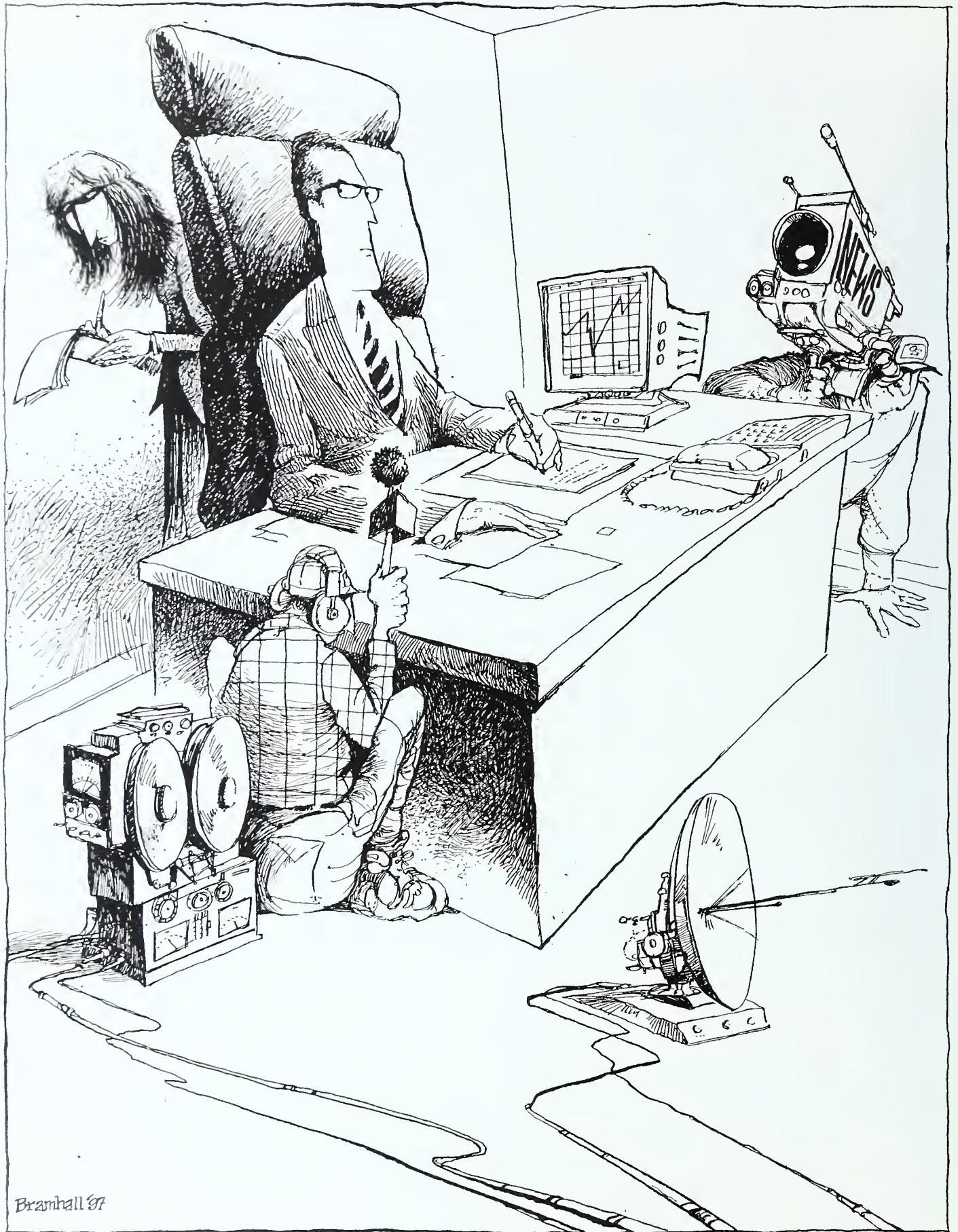
**S**EVENTY STUDENTS, twenty alumni, and ten faculty and staff members participated in the annual Law Fund Alumni Telethon in October. The telethon, which benefits the Law Fund, raised \$100,000.



**Law student Ray Hudson with Teen Court student attorney**

### Teen court

**P**ROFESSORS Don Castleman, Ronald Wright, and Patricia Roberts are among the members of the law school faculty who are serving as judges in Winston-Salem's Teen Court. Thirty law school students, led by second-year students Jennifer Mermans and Tina Lloyd, also volunteer through this program, which provides an alternative to Juvenile Court for teenagers who commit non-violent misdemeanors. Local teenagers also serve as the jurors, bailiffs, clerks, and attorneys. Typical sentences handed down by the court include community service and mandatory attendance at educational seminars.



WILLIAM BRAMHALL

Bramhall 97



# MASKED *Media*

Judges,

Juries,

and the

Law of

Surreptitious

Newsgathering

by

David A. Logan

**T**he images could hardly be more riveting: from Beijing to London, from Hondo to Hickory, aggressive journalists with hidden cameras have captured undeniable evidence of serious wrongdoing. Their reports have exposed slave labor, child abuse, and unsanitary foodhandling. Undercover reports—often obtained through an elaborate scheme to mislead the target as to the reporter's identity or intentions—have a colorful history dating back more than a century to the exploits of Nellie Bly. Such tactics raise serious and unsettled issues of journalistic ethics, especially as “gotcha” stories, relying upon lipstick-sized video cameras, have proliferated on television “newsmagazine” shows, raising ratings and thus profits.

Some targets of these surreptitious newsgathering operations are now fighting back. Eschewing attacks on the accuracy of the reports, they focus on the propriety of the newsgathering process; they assault not the message, but the method.

This is a sensible tactic. The law of libel is well-settled and a substantial libel award, upheld on appeal, is a relatively rare occurrence. The law of newsgathering, on the other hand, is much

more inchoate. Subjects of unflattering stories now increasingly turn to what cheerleaders for the media derisively term “trash torts,” primary among them fraud and trespass. Unlike libel law, the First Amendment provides the media uncertain protection from claims arising out of the newsgathering process. This is because “generally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news.”

Nevertheless, some argue that there should be a constitutional bar to liability for newsgatherers unless the resulting story was false and published with actual malice. This position is disseminated by a chorus of handwringers who portray any legal pressure on the journalistic process as the death of the First Amendment and, perhaps, life as we know it in the United States.

Immunity from tort liability should be rejected for a range of reasons, some prudential, some jurisprudential. First, as a practical matter, it is unlikely that the United States Supreme Court would reverse well-established precedent dating back decades and recognize a broad newsgathering immunity, or



ABC News anchor Ted Koppel, left, talks with Chris Ahearn, corporate communications manager for Food Lion, during a commercial break in the broadcast of the television program "Viewpoint" from Wait Chapel on the Wake Forest campus February 12, 1997.

any position that would require content-based inquiries into newsworthiness. As a matter of public policy, immunity overly protects the newsgathering process at the expense of the legitimate interests protected by the laws broken by surreptitious newsgathering. A constitutional immunity would also unnecessarily nationalize and constitutionalize an evolving area of state law. Finally, immunity would encourage lying to get a story, a reporterial technique that should be used rarely, and only as a last resort.

On the other hand, full-throttle application of tort principles exposes a media defendant to the wrath of local juries, as the \$5.5 million punitive damages award imposed upon ABC by the jury in the *Food Lion v. ABC* litigation (later set aside by the trial judge) proves.

This article rejects both extremes and instead proposes an inelegant solution to the vexing problems presented by surreptitious newsgathering. If a reporter violates "generally applicable" state tort law (e.g., commits fraud and trespass), she should be subject to liability and an award of compensatory, and, in extreme circumstances, punitive damages. The damages available, however, should be sharply cabined to avoid creating excessive disincentives to engage in investigative reporting. Recognizing that the "primary purpose [of tort law] is to make a fair adjustment of the conflicting claims of the litigating parties," these limits should arise primarily from state law, with judges using familiar common law principles.

### **The Uncertain Contours of the Constitutional Law of Newsgathering**

Two general lines of authority inform a discussion of the role of the First Amendment in the law of newsgathering. The first is based upon the Supreme Court's observation that the publication of truth "may never be the subject of either criminal or civil sanctions where discussion of public affairs is concerned" and those related cases that recognize the special role the media play in informing the public. Second, and in conflict, is the line of authority reflecting the view that the media have no special exemption from "laws of general applicability." Consideration of these conflicting cases attests that there is no constitutional authority that completely shields surreptitious newsgathering from state tort law, nor should there be.



## Why the Common Law and Not the Constitution?

The lower courts are split on whether and how state tort law applies to surreptitious newsgatherers. Supreme Court precedent and sound public policy mandate there should be no First Amendment immunity from civil liability for violations of "generally applicable" laws; rather, tort law should be available to the victim of an undercover operation, and this is so for several reasons. First, the state interests behind the torts of fraud and trespass are deeply rooted and should not be frustrated absent a compelling justification: a limited damages recovery adequately protects free press interests, while upholding the important values represented by the common law. Second, there is the problem of overnationalization of our common law, and the related risk of the overconstitutionization of tort law, which would result if the First Amendment provided immunity to the press for misconduct in the newsgathering process. Finally, readily available common law doctrines, backstopped by existing constitutional law, can appropriately balance the interests of newsgatherers and their targets.

### 1. The Common Law Torts

Surreptitious newsgathering may violate a range of rights, state and federal, statutory and common law. This Article focuses on the venerable torts of trespass and fraud, the two causes of action most centrally implicated by undercover tactics.

The early common law recognized that "exclusive use" was central to the bundle of rights enjoyed by the owner of real property. In the eyes of the common law, every unauthorized entry upon the soil of another was a trespass, "for the law bounds every man's property and is his fence." The property owner could recover for trespass without any proof of actual damage to the property, so that from every entry onto the soil of another "the law infers some damage." Because the trespass action was directed at the vin-

dication of the owner's right to quiet use and possession, it was exempted from the operation of the maxim of *de minimus non curat lex* ("the law does not concern itself with trifles"). Further, it was no defense that the intrusion occurred in the pursuit of a legitimate activity.

Like trespass to land, the tort of fraud has deep roots in the common law soil. The 1789 case of *Pasley v. Freeman* established that an action for deceit need not be based upon a contract, and that

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## Two general lines of authority inform a discussion of the role of the First Amendment in the law of newsgathering.

English law "imposed a general obligation of honesty in word and conduct." This, in turn, helped establish the elements of the modern claim of fraud: a false representation, known to be false by the one making the statement, made with the intent that the complainant would rely upon it, reliance, and proximately caused damage.

A defendant's intentions in misleading a plaintiff do not excuse him from liability. "Motive is immaterial." It does not matter if the defendant intended to benefit the plaintiff, was disinterested, or expected to make personal gain from the fraud. Therefore, a complainant may recover for fraud even if the representation was made with the intention of causing good to occur.

While the action for fraud grew out of efforts to create an environment

of fair business practices, an honest marketplace is but a specific manifestation of the more general desire for an honest society. The deep ethical, philosophical, and moral concerns that underlie actions for fraud also support the application of tort principles to the conduct of reporters.

Fraud reflects a basic social norm: lying is wrong.

Lies also tear decisions from their moorings in facts, undermining the quality of the action that proceeds on their basis.

Even those who believe that lying may be appropriate in rare cases, emphasize that a lie should be a last resort, used only in response to an acute or chronic crisis involving an extreme and immediate threat. There is also the tendency of liars to inflate the proportions of a perceived crisis, to justify a lie. Further, liars tend to be certain that they make wise use of the power that lies provide, and have great confidence in their ability to accurately identify the circumstances in which lying may be justified.

Similarly, there may be institutional pressure to lie:

*Thus, the cub reporter who will lose his job if he is not aggressive in getting stories, . . . may in principle be more sorely tempted to bend the truth than those whose work is secure; but this difference may be more than outweighed by the increased callousness of the latter to what they have come to regard as routine deception.*

*The very stress on individualism, on competition, on achieving material success which so marks our society also generates intense pressure to cut corners. To win an election, to increase one's income, to outsell competitors—such motives impel many to participate in forms of duplicity they might otherwise resist. The more widespread they judge these practices to be, the stronger will be the pressures to join, even compete, in deviousness.*

Lying is especially pernicious when done by representatives of those institutions in whom people place their trust. It is a central tenet of lawyers' ethics that lying is wrong. The Vietnam war was all-the-more tragic because of the bitter distrust of government bred by the lies of our civilian and military leaders.

Many, if not most, journalists consider lying unethical. It is a rare news story that cannot be obtained without dishonest means, and, in any event, lying to get a story raises doubts about the accuracy of the resulting report and casts a cloud over the credibility of all news.

The current wave of undercover television reports has contributed to the stunningly low level of public trust the media are currently experiencing, and it is appropriate for a community

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## Perhaps the biggest danger associated with nationalization of tort law is the magnification of error.

(through a jury) to reflect the view (through a finding of fraud and trespass induced by fraud) that foul play, even in the pursuit of important ends, is unacceptable.

### 2. The Overnationalization of the Common Law

As we approach the millennium, we are witnessing an assault on the common law rarely witnessed in our modern history. One aspect of this is the relentless pressure for nationalization from so-called "tort reformers."

Tort law has traditionally been state law, a central aspect of the sovereign's prerogative to define its own rules of conduct. Indeed, the United States Supreme Court has recognized the "paramount" interest of a state "in fashioning its own rules of tort law."

National intervention is rarely an unvarnished good. The exercise of national power raises the specter of a centralized authority, which increases the risk of tyranny, a concern of the antifederalists and, later, the Jeffersonians. Conversely, placing authority in the hands of distinct entities, with hundreds of judges, who serve as the result of diverse political processes, reduces the risk of despotic governance.

Second, is the practical point that local solutions to problems are more likely to reflect a close tailoring to community needs and values.

Third, states have the right to favor certain interests over others. For example, the law of corporations varies widely. Favoritism is apparent in tort law, as well. Take the example of premises liability. Some states maintain substantial common law protections for property owners from lawsuits brought by "licensees" and "trespassers"; others have responded to fairness and deterrence concerns and extended protections to all entrants injured on the premises.

Perhaps the biggest danger associated with nationalization of tort law is the magnification of error. If the national government strikes the wrong balance, the effects are locked in nationwide. This result is particularly unfortunate in the early stages of public debate about sensitive issues, before a national consensus has formed.

### 3. Avoiding the Overconstitutionalization of Tort Law

The United States Supreme Court has undercut much of the state tort law that for centuries applied to civil claims arising from the activities of the press. This has occurred most visibly in the realm of defamation, but the Court's decisions have worked change upon allied issues as well. Fortunately, the

Court has yet to constitutionalize state tort law in the newsgathering context. Such an undertaking would be a mistake for many reasons.

First, judicial conversion of an area of state common law into federal constitutional law is a huge legal step. The change alters, perhaps dramatically, the rights and remedies for litigants in a realm traditionally the domain of the states. *New York Times v. Sullivan* is a prime example of the wide ripple effects that the Court's intrusion can cause. Although on its face *New York Times* involved only a matter of whether state common law rules adequately balanced the state interest in protecting the reputation of its citizens with the need for a robust press, in actuality the Court was ensuring that state law would not be used to prevent routine news coverage of the civil rights movement in the Deep South. In such compelling circumstances, and with an appropriate understanding that the "central meaning of the First Amendment" was to encourage debate about the conduct of government, a surgical incursion into the traditional domain of the states was appropriate, indeed salutary. In the next decade, however, the court followed a course predicted by Harry Kalven, Jr., and, in *Gertz v. Robert Welch, Inc.*, constitutionalized virtually all of libel law. At the time, Justice White criticized how the *Gertz* majority "in a few printed pages," "scutt[ed] the libel law of the states in a wholesale fashion," and imposed "radical changes in the law and severe invasions of the prerogatives of the states."

Furthermore, constitutionalization "locks in" a particular response because of the strong disinclination of the Supreme Court to overrule its own precedent (and the inability of inferior courts to do so). This stasis is in marked contrast to the relatively pliable, diverse nature of state law. State courts often are the source of good ideas. For instance, state courts identified suppression as a remedy for improper police searches years before the United States Supreme Court, and





Professor David A. Logan argues against unlimited license for the media in determining what stories justify running roughshod over the rights of their subjects.

the right to counsel in criminal trials applied a century earlier under state law.

Constitutionalization also freezes, or at least chills, the evolution of state law. State law often proceeds, albeit gradually and unevenly, toward the same regime of rules that gets imposed *ex cathedra* by the United States Supreme Court. A good example of this is what happened in the defamation area. Before *New York Times*, many states developed their own speech-protective doctrines to shield the media from liability to public officials. *New York Times* adopted as a matter of federal constitutional law a substantial bar to libel liability (already recognized in several states), beginning a process of constitutionalizing most of libel law.

At the very least, the lower courts should look initially to existing tort law doctrines to achieve speech-protective results. Unlike the Supreme Court, which can only declare whether an existing state rule meets constitutional criteria, state courts can adjust or limit tort

remedies so that they directly advance state policy without unnecessarily restricting speech.

Major changes in the common law and severe invasions of the prerogatives of the states should be avoided unless absolutely necessary. At present, there is no substantial evidence that damage awards for surreptitious newsgathering have created a crisis needing a national and constitutional response. Careful application of non-constitutional doctrines like legal cause and remittitur can protect free speech concerns while accommodating legitimate state interests in protecting citizens from overzealous reporting. "The necessary protection should be provided, where possible, without disrupting the good sense of the common law."

#### Conclusion

Songwriter Paul Simon observed that "one man's ceiling is another man's floor." And so it is with media law: what to the media appears intolerably chilling may to a judge or jury be appropriate compensation

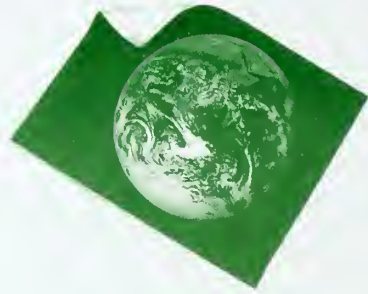
for intentional wrongdoing, as well as a deterrent of future misconduct.

The legal questions presented by surreptitious newsgathering require consideration of not just the undeniable benefits provided to our democratic society by a vigorous press, but also the deeply-rooted notions of fair play and property rights reflected by the torts of fraud and trespass. The media, perfectly understandably, argue that there should be no role for the tort system in the newsgathering context, and is especially fearful of a jury's ability to award crushing damage awards. But a legal regime that immunizes all newsgathering misconduct would create unfortunate incentives for the media to run roughshod over the rights of anyone who comes into their crosshairs. The media want to be the sole judge of what stories are worth pursuing, as well as what means are appropriate to their ends.

Such an immunity should be rejected; instead, there should be a role for judges and juries (and thus the community) in determining whether a story is so important that it justifies the use of unconventional (and invasive) methods of reportage, which are themselves highly controversial among journalists. But, equally important, juries would be constrained from awarding substantial damages, either compensatory or punitive, by the application of well-known and readily available legal cause and remedial doctrines from state tort law, backed up by an existing array of federal constitutional rights.

Sometimes a little chill is a good thing. ■

*Professor David A. Logan has taught torts and related courses at Wake Forest University School of Law since 1981. He has published articles in a number of leading journals and is co-author (with his brother Wayne) of North Carolina Torts, a treatise published by the Carolina Academic Press in 1996. This is an excerpt from a longer piece that will appear in early 1998 in the Iowa Law Review.*



# WORLD COURTYARD

BY EXPOSING FOREIGN-TRAINED LAWYERS TO AMERICAN LAW,  
WAKE FOREST IS HELPING MAKE A SMALL WORLD EVEN SMALLER.

BY ELLEN DOCKHAM





[From left] Francesco Ferrini, Italy; Abdulaziz Al-Bosaily, Saudi Arabia; Professor Alan Palmiter; Sabrina Zancan, Italy; Adriana Ozorio, Brazil; Adjunct Professor Susan Montaquila.



**T**hey say it's a small world, and it's getting smaller every day. Ask Wake Forest law students in the halls of the Worrell

Professional Center if they think that cliché is true, and they'll probably agree. Chances are, they can support their argument by telling you the world is coming to their courtyard. Perhaps they've chatted between classes with an Italian lawyer, quizzed a Saudi Arabian in contracts, or studied with a Brazilian in the library.

For the first time this year, J.D. students have a chance to study alongside foreign-trained lawyers who have been admitted to the law school's new one-year LL.M. program in American law. The foreign lawyers will leave Wake Forest with a master's degree and the ability to deal with the complexities of international legal relationships. The J.D. students will come away with first-hand knowledge of how lawyers in other countries think and, by virtue of comparison, a clearer concept of what's right and what's wrong with the American legal system.

"Increasingly, economies are becoming global," says Dean Robert K. Walsh. "We need to teach our students to think in comparative ways. Studying another country's law allows you to understand your own law better. This will make better lawyers out of the foreign students and our J.D. students."

The LL.M. program is an idea already put into practice by other top-notch law schools around the country, but like the rest of the J.D. program, this one will have that special Wake Forest twist, says Susan Montaquila, director of the program and adjunct professor. The program intentionally will remain small—from four to eight students per year—so that only top-notch applicants with excellent English

writing and speaking skills can be chosen and so those students will receive more personalized attention. The small size also allows each student to tailor the program to their interests and allows a team of faculty to teach a six-week introductory program about American law tailored to the LL.M. students. The students are required to take twenty-four credit hours, including one first-year course and a legal writing course, and must write a thesis. The hours—six fewer than a J.D. student takes in one year—allow for the language and cultural adjustment the LL.M. students must make.

Those adjustments can make the law school's already difficult academic work even harder, say this year's first group of LL.M. students. Adriana Ozorio, a thirty-year-old lawyer from Rio de Janeiro, Brazil, says it can take double the amount of time to do the work in English. Sometimes, though, it's trying to think like an American that's harder than reading or writing like one. "I'm trying to understand how people here reason," she says. "In Brazil, we are more abstract, and here things are more practical. But that's where many of our problems come from in Brazil: We don't know how to make the abstract work." Ozorio says that with increasing U.S. investment in Brazil, she feels the need to understand American legal concepts.

For Abdulaziz Al-Bosaily, a thirty-two-year-old lawyer from

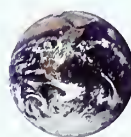
Saudi Arabia, studying in English is no picnic, but it is perhaps the cultural adjustment that has been the hardest. Coming from a country where men and women are separated in school and at work, it has been interesting and different for him to have women as fellow students and even as professors. Al-Bosaily, who will work for the Saudi government when he finishes the program, says it's necessary for him to understand the American way of doing things, both culturally and legally. "The world is becoming smaller," he says, "and being here gives me the ability and the opportunity to interact with Americans and understand what goes on in other parts of the world."

Sabrina Zancan, a twenty-seven-year-old native of Venice, pointed out the difference in styles of learning between European and American universities. In Europe, she says, the professors lecture and the students listen and nobody gets closer than that. "Here students have guidance and they partici-

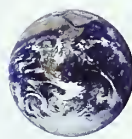
pate in class," she says. "In one of my classes, a student went to the professor's office and brought back the test and nobody even watched us taking it. I was surprised by the honesty; no one tried to cheat." Zancan has also been surprised by the power of lawyers in America. "In Italy, we have more black letter law. Here, you never know. There's more middle ground and you can change a rule if you have a good lawyer."

Those differences between the Italian

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and American legal systems are exactly what brought Francesco Ferrini, a twenty-eight-year-old lawyer from Rome who works with international clients, to the LL.M. program. "American economy and American law are important to the world and I felt like I needed a good comparison between the two legal systems," he says. "That type of comparison can help you understand your own legal system even better."

Both Zancan and Ferrini became interested in the program after participating in the law school's summer program in comparative law at Casa Artom, the University's house in Venice. Wake Forest law professors and guest lecturers from Italian universities teach a four-week program to about twenty Wake Forest students with the same intent as the LL.M. program: to enrich each side's understanding of the other's legal system. A similar program takes place in London each summer. Since most J.D. students don't get the opportunity to participate in the summer programs, the law school decided to bring foreign students to Winston-Salem, says Professor Alan Palmiter, chair of the LL.M. faculty committee.

"The foreign students make points in class no one else would ever have made. They ask deep, insightful questions," Palmiter says. "The moments in class when they bring up different views serve to open our intellectual pores. They are the MSG for the law school's palate."

**M**ontaquila, who teaches the legal writing course that all four LL.M. students took in the first semester, says one such moment came when she asked the students what the ultimate sources of law are.

She got predictable answers such as the constitution and the statutes of Congress until it was Al-Bosaily's turn. His answer: the Koran. That, says Montaquila, was an answer she had never heard in her class. "It made us all stop and think. It is of the utmost importance to have this type of interaction because the legal and business systems of the world are intertwined. And it's good for spicing up class."

Dannielle Williard, a first-year student from Tampa, Florida, who took Montaquila's legal writing class with the LL.M. students, says their presence in class broadens the conversation. In fact, the interaction has led her to consider enrolling in a comparative law program in a foreign country herself. "It helps me to realize how the U.S. relates to the rest of the world. We're not the only system. I think we all need to learn how to function in a really small world."

The LL.M. program, besides the most important goal of strengthening the education of both the foreign and American students, has another benefit, organizers say. Having a successful program with graduates who go on to do important work in their home countries will help spread the law school's reputation on an international level. "The Wake Forest School of Law has now come of age," Palmiter says. "We are now an international law school. These new ripples fill the pond."

Montaquila says the school will work to increase the diversity of countries represented by the LL.M. students

'The moments  
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both to widen Wake Forest's exposure and to bring more comparative experiences home for the J.D. students. Recruiting efforts include contacting 190 U.S. embassies and international education advisers and 200 foreign law schools, encouraging Wake Forest faculty to spread the word to their personal contacts in other countries,

and advertising on the Internet. By October 1, she had received eighty-five inquiries from thirty countries including Germany, Japan, Saudi Arabia, Italy, China, Thailand, and former Soviet countries. More applications mean more of a chance to select excellent students, she says.

Brett Weber, a second-year student from Columbus, Georgia, serves as the teaching assistant for the program. He helps the LL.M. students with research and writing skills, edits their papers and helps them study. He also is supposed to help them on the social scene, but he says they haven't had any trouble fitting in and making friends. In fact, they haven't had much trouble in class, either, he says. "It's impressive to see these students thrive in graduate school in a second language. People here stress out all the time, and they're doing it in their native language."

The LL.M. program should have a strong impact, Palmiter says. "The LL.M. students will forever see the world differently. Being in the United States will be a transforming event; they'll be different lawyers and changed persons. But they also impart much learning to us." ■

# Notes Alumni

## 1931

**Wade E. Brown** is the author of a book titled *Wade E. Brown: Recollections and Reflections*. The book recounts his life in the Boone, Blowing Rock, NC, area, including his 3 terms as Boone's mayor.

## 1951

**Donald E. Greene** recently became the first layman in the Baptist Lay Witnessing Foundation to have participated in 500 lay-led revivals. He was the coordinator for the majority of those revivals. He has served the Baptist Lay Witnessing Foundation in a variety of roles since 1957.

**Edwin Willys Hooper** (BS '48) retired from active practice of law and joined his stepson in the operation of Carolina Veneer of Thomasville, Inc. in Thomasville, NC, and Liberty Veneer Co. in Liberty, NC. The two plants manufacture single-ply rotary veneer.

## 1964

**Larry B. Sitton** (BA '61) was named president-elect of the North Carolina Bar Assoc. in June and will take office in June 1998. He is a partner in the Greensboro, NC, office of Smith Helms Mulliss & Moore, LLP.

## 1965

**Jack Thompson** (BA '63) was awarded the Outstanding Trial Judge Award by the North Carolina Academy of Trial Lawyers in June. The award is

presented annually at the academy's annual meeting in Myrtle Beach. He has been a Superior Court judge for the 12th Judicial District since January of 1991.

## 1967

**John C. Martin** (BA '65) was named VP of the North Carolina Bar Assoc. in June. He is a judge for the North Carolina Court of Appeals and serves on the Wake Forest University School of Law Board of Visitors. He also served as a Superior Court judge and was in private practice in Durham, NC, for 5 years. He is married to Margaret Rand Martin and has 3 children: Lauren (26), Sarah (21), and Susan (19); and 2 stepchildren, Trip (12) and Louise (10).

## 1969

**Ronald D. Nicola** opened a law office in Denville, NJ, concentrating in the areas of personal injury, criminal defense, commercial disputes, and general business. He encourages alumni in the area to call or stop by. He resides in Chatham, NJ, with his wife and 2 sons.

**Carl L. Tilghman** (BA '66) recently was appointed a special Superior Court judge for the state of North Carolina. He resides in Beaufort, NC.

**S. Nelson "Sandy" Weeks** (BA '66) recently was sworn to the Maryland General Assembly Compensation Commission, which establishes compensation and allowances paid to the members of the Maryland

General Assembly. He is a partner in the Baltimore, MD, office of Ballard Spahr Andrews & Ingersoll.

## 1970

**Michael J. Lewis** (BA '67) was chair of the 1997 "Safe and Sober Prom Night." He, his partner **David D. Daggett** ('85), and their law firm, Lewis & Daggett, P.A., sponsored the project. Over 12,000 students from 28 area high schools participated in the event, which promotes a drug- and alcohol-free environment at local high school proms. Lewis & Daggett will continue to sponsor this event in 1998 and expects participation to increase.

## 1972

**John L. Barber** joined the Greensboro office of Smith Helms Mulliss & Moore, LLP. His practice is in general corporate and business law, as well as promotion marketing and franchise law. He was most recently general counsel of Krispy Kreme Doughnut Corp.

## 1973

**John L. Pinnix** was elected to the national Executive Committee of the American Immigration Lawyers Association. He is director of the Raleigh, NC, firm Allen and Pinnix, PA, and specializes in immigration and naturalization matters.

**Melvin F. Wright Jr.** joined the law firm of Lewis & Daggett in Winston-Salem. He will work in the firm's personal injury group.

Previously he was a senior partner in the law firm of Wright, Parrish, Newton & Rabil in Winston-Salem. He is a past president of the Forsyth Co. Bar Assoc. and the 21st Judicial District.

## 1974

**Richard V. Bennett** (BA '68) is a partner in the new law firm of Bennett Dawson & Guthrie in Winston-Salem. The firm concentrates on insurance defense litigation, medical malpractice, and construction law.

## 1975

**Jack Cozort** resigned his position as a judge on the North Carolina Court of Appeals to join the firm of Parker, Poe, Adams & Bernstein. In his new position, he will work in public finance and government relations. He was a judge on the Court of Appeals since 1985 and served as counsel to Gov. Jim Hunt from 1977 to '84.

## 1976

**John W. Clark** was selected as staff judge advocate for the New York Air National Guard and promoted to colonel. He continues to be employed full-time with the law firm of Tobin and Dempf in Albany, NY.

## 1977

**Joseph T. Carruthers** became a fellow of the American College of Trial Lawyers, which recognizes excellence in trial lawyers. He is a director with



the firm of Bell, Davis & Pitt, PA, in Winston-Salem and has been an adjunct professor of business law at the Babcock Graduate School of Management.

## 1978

**John J. Stenger** joined the firm of Jenkins & Gilchrist, PC, in Dallas, TX. He practices in the areas of construction, commercial real estate development, finance, and corporate law.

**Mark S. Thomas** (BA '75) is the chair of the Employee Benefits Committee of the North Carolina Bar Association's Labor and Employment Law section.

**J. Randolph "Randy" Ward** (BA '75) resigned after 8 years as a commissioner on the North Carolina Industrial Commission in May 1997. He has joined the Duke Private Adjudication Center in Cary, NC, as a mediator and is consulting with Blue Cross Blue Shield on managed care and litigation matters. He resides in Cary with his wife, **Lynne Baker Ward** (BA '75).

## 1979

**R. Stewart Barroll** was appointed town attorney for Chestertown, MD. He continues to maintain a general practice with emphasis on civil and criminal litigation in Chestertown, where he resides with his wife, Kimberly.

**Joseph J. Gatto** has joined the firm of Spry Leggett & Crumpler, PA, in Winston-Salem. He served as a District Court judge in Forsyth Co. and

has practiced in Winston-Salem for the past 18 years. He will practice in the areas of domestic relations, equitable distribution, and civil litigation.

## 1980

**Rodney A. Guthrie** is a partner in the new law firm of Bennett Dawson & Guthrie in Winston-Salem. The firm concentrates on insurance defense litigation, medical malpractice, and construction law.

**John W. Lassiter** (BA '76) is the president of Carolina Legal Staffing, a new company that provides temporary attorneys and legal support staff to law firms and corporate legal depts. in North and South Carolina. He, his wife, Beverly, and their 2 children reside in Charlotte, where he continues to serve on the Charlotte/Mecklenburg Co. Board of Education.

## 1981

**Martha Gayle Barber** is a partner with Bell Seltzer Park & Gibson, which recently merged with Alston & Bird. She practices trademark law and works in the firm's Charlotte office.

Lt. Col. **Dave Jonas**, USMC, recently returned from a year in Okinawa, Japan, and is stationed in the Pentagon working for the Joint Chiefs of Staff.

**Jeffrey R. Usher** has taken a new position as a senior consultant with The Salem Co. of Charlotte, NC.

## DEAN'S SCHEDULE

*Following is a schedule of receptions and luncheons this spring that School of Law Dean Robert K. Walsh will be attending:*

**February 2** Dallas luncheon

**February 13** New York City luncheon

**February 19** Atlanta luncheon

**March 11** Hickory luncheon

**March 23** Charlotte luncheon

**March 27** Richmond luncheon

**April 6** New Bern reception

**April 7** Wilmington reception

**April 8** Rocky Mount luncheon

**April 20** Washington, D.C., reception

**April 28** Raleigh luncheon

**April 29** Fayetteville luncheon

**May 5** Greensboro luncheon

**May 28** Winston-Salem reception

## 1982

**Christine L. Myatt** (BA '79) recently was named chair of the North Carolina State Bar Board of Legal Specialization, which works to improve the competency of bar members in legal specializations and delivers specialized services to the public. She is a partner at the firm of Adams Kleemeier Hagan Hannah & Fouts, PLLC, of Greensboro, NC, and is a specialist in bankruptcy law.

## 1983

**Margaret Shea Burnham** recently was elected secretary of the North Carolina Bar Assoc. Real Property Law section. She is a partner in the firm of Adams Kleemeier Hagan Hannah & Fouts, PLLC, in Greensboro, NC, and concentrates in the areas of real estate and litigation.

# Notes Alumni

**Eloise McCain Hassell** is certified as a North Carolina District Court arbitrator and as a North Carolina Superior Court mediator. She is a full-time lecturer of business law at the Bryan School of Business and Economics at UNC-Greensboro.

**Gregory Ralph Hayes** (BA '80) is a District Court judge in Hickory, NC. He has 2 children, Katherine (4) and Benjamin (2).

## 1984

**Nancy Stoyer Davenport** was named executive director and counsel of the New York State Legislative Ethics Committee. She resides in Kingston, NY, with her husband, **Jim Davenport** (MBA '84) and their 3 children: Kate (9), Jay (8), and Will (5).

**Brian A. Gallagher** is general counsel to West Virginia University Hospitals and assoc. general counsel to the West Virginia United Health System. Previously he was an 8-year member of the West Virginia House of Delegates.

## 1985

**Robert M. Barrett** is the VP and asst. general counsel for Flagstar Corp. in Spartanburg, SC, where he resides with his wife, Kelly.

**Sherry R. Dawson** is a partner in the new law firm of Bennett Dawson & Guthrie in Winston-Salem. The firm concentrates on insurance defense litigation, medical malpractice, and construction law.

**Mary Davis Scales** was named the Stites & Harbison Professor of Law at the University of Kentucky School of Law. She was the first assoc. professor ever to receive this honor.

**Ron Spivey** is serving a year term as president of the N.C. State University Alumni Assoc. He and his wife, **Cyndy Spivey** (BA '80, JD '85), reside in Winston-Salem.

## 1986

**Jon L. Austen** works for the firm of Pratt-Thomas, Pearce, Epting & Walker, PA, in Charleston, SC, where he resides with his wife, Amy Austen, and their 2 children, Madison Claire (3) and John Davis (1).

**J. Nicholas Ellis** has been re-elected president of the Nash-Edgecombe Bar Assoc. He and his wife, **Susan K. Ellis** ('87), reside in Wilson, NC.

## 1987

**Greg C. Ahlum** is a partner in the firm of Johnston, Allison & Hord in Charlotte, NC, where he resides with his wife, Emily, and their 2 children, Stuart (7) and Will (3).

**Lani Hustace George** received her CPA certificate in Nov. 1996 after passing all 4 parts of the exam on the first try.

**Gregg E. McDougal** was named to *Georgia Trend* magazine's "Forty Under 40" list highlighting business and civic leaders across Georgia who are

## Law Fund Update

Nearly \$100,000 has been contributed to the 1997-98 Law Fund drive. As of early November, \$91,540 in gifts had been received toward the goal of \$475,000, said John Madden (JD '83) of Raleigh, North Carolina, chair of the campaign.

under the age of 40. He was selected for his professional accomplishments as a lawyer and for his civic involvement in Augusta, GA. He is a partner in the Augusta office of Kilpatrick Stockton, LLP.

## 1989

**Damon V. Pike** was named to a 5-year term on the U.S. Dept. of Commerce's Exporters' Textile Advisory Committee, which provides advice and guidance to Commerce Dept. officials on the expansion of textile exports. He is the director of international trade services for the Atlanta, GA, office of Deloitte & Touche LLP. He is a member of the bars of Georgia, North Carolina, and the District of Columbia, as well as the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit.

## 1990

**Robert G. Spaugh** opened a solo law practice in Winston-Salem. He will continue to emphasize family law, personal injury, and litigation, including worker's compensation. He was previously a partner in McCall Doughton & Spaugh PLLC in Winston-Salem.

**Kristen Gore Stecz** is a labor and employment attorney with the firm of Moots, Cope & Stanton in Columbus, OH. Previously she was a stay-at-home mom.

## 1991

**Joan Brodish Binkley** is a paralegal specialist in the U.S. Attorney's Office in Greensboro, NC. She resides in Winston-Salem with her husband, Daniel Binkley.

**Daniel J. Fritze** is an associate with Nelson, Mullins, Riley & Scarborough, LLP, practicing



# Notes Alumni

corporate and securities law in the firm's Columbia, SC, office. He resides in Columbia with his wife, Katie, and 2 children, Andrew (6) and Caroline (2).

**Caroline Kelly** recently finished a year residency in chaplaincy at Georgia Baptist Medical Center in Atlanta, GA. She has returned to Columbia Theological Seminary in Decatur, GA, and will graduate in May 1999.

**Georgina Marie Mollick** is in-house counsel with International Heritage, Inc. of Raleigh, NC. Previously she was with the firm of Wood & Francis, PLLC, in Raleigh.

**Matthew P. Puskarich** is the prosecuting attorney of Harrison Co., OH. He resides in Cadiz, OH.

**Carol Jones Van Buren** (BS '88) was elected partner at the law firm of Kennedy Covington Lobdell and Hickman in Charlotte, NC. She practices environmental law.

## 1992

**Farhad Aghdami** is director and shareholder in the firm of Florance, Gordon and Brown, PC, in Richmond, VA. He joined the firm in 1992 and practices in the areas of taxation and estate planning and administration.

**Erica B. Copen Ellingsen** is a deputy prosecuting attorney in Coeur d'Alene, ID. She and her husband, Mark Ellingsen, reside in Hayden Lake, ID, with their son, Riley (2).

**Laura Boyce Isley** (BA '89) is a staff attorney with the North Carolina Court of Appeals.

**Mimi M. Jones** was promoted to senior staff attorney with the KY Court of Appeals. This past spring she toured England, Scotland, and Wales with her husband, Jeff. She and her husband were confirmed in Trinity Episcopal Church in Danville, KY, with the loving support of fellow Deacons **Bill** (BA '82) and **Susan Johnston** (BA '82).

**Josh M. Krasner** completed a clerkship with Assoc. Justice I. Beverly Lake of the North Carolina Supreme Court and has joined Maupin Taylor & Ellis, PA, in Raleigh, NC. He specializes in labor and employment law.

**Karen Linz** was appointed to the editorial board of the *Florida Bar Journal* and the Media and Communications Law Committee of the Florida Bar.

**Jeff Wigington** has been named a partner in the Corpus Christi, TX, office of Brin and Brin, PC.

## 1993

**Tina Carro Krasner** completed a clerkship with Chief Justice Burley Mitchell of the North Carolina Supreme Court and has joined the criminal appellate section of the North Carolina Attorney General's office.

**Ann Maddox Utterback** is president of the young lawyer's division of the New Mexico Bar Association and an attorney with the firm of Dines, Wilson & Gross in Albuquerque, NM.

## 1994

**Jonathan E. Huddleston** is with the firm of Pritchett,

Coake & Burch, PLLC, in Windsor, NC.

**Tracey G. Tankersley** is an associate at the law firm of Adams & Costley, LLP, in Greensboro, where she practices family law. She is a former clerk for the Hon. Joseph R. John Sr. of the North Carolina Court of Appeals in Raleigh.

**C. Terrell Thomas Jr.** became a partner in the Wendell, NC, firm of Kirk, Kirk, Gwynn & Howell, LLP, on August 1, 1997.

**Scott A. Weltz** was recently a member of a NC National Guard JAG delegation to the Republic of Moldova, where he conferred with senior government officials. He is in the product liability practice group at Womble Carlyle Sandridge & Rice in Winston-Salem, where he resides with his wife, Debra.

## 1995

**Pete Carlino** (BS '92) and his wife, **Cathy Myers Carlino** (BA '92), live in Charlotte, NC, with their two yellow labs. He is practicing real estate law, and she is an assistant comptroller with Royal Insurance.

**Susan Campbell Gentry** (BA '89) has just completed a 2-year federal judicial clerkship in Raleigh, NC. She is living in Taipei, Taiwan, with her husband **Jay Gentry** (BA '89).

**Lisa Kennedy Soultanian** is a financial analyst with J. Crew. Her husband, **Richard D. Soultanian** (JD '93), is an international corporate tax attorney with the firm of

Goodman, Phillips & Vineberg. They both work in New York City.

## 1996

**Elizabeth C. Todd** joined the firm of Allman Spry Leggett & Crumpler, PA in Winston-Salem. She will practice in the areas of domestic relations, civil litigation, and bankruptcy.

## 1997

**Mark Edwards** (BA '94) is an attorney with the firm of Fields & Cooper in Nashville, NC.

**Erin Haygood** joined the staff of East Central Community Legal Services, a non-profit corporation that provides free civil legal assistance to low-income residents of Johnston, Wake, Harnett, Sampson, and Lee Counties in North Carolina.

## Marriages

**James K. Pryor** (JD '85) and Jennifer Robinson. 5/24/97

**Holly Underwood** (JD '88) and E. Wayne Verde. 5/25/97

**J. Gregory Hatcher** (JD '93) and **J. Kate Harris** (JD '95). 9/20/97

**Sharon Margaret Fedorochko** (JD '94) and **Eric Wayne Iskra** (JD '94). 4/12/97

**Lisa A. Kennedy** (JD '95) and **Richard D. Soultanian** (JD '93). 9/27/97

SPRING REUNION

MAY 1-2, 1998

## Join classmates and faculty at the Wake Forest University School of Law Class Reunion this spring!

*Please call your class contact below,  
or the Office of Law Development and Alumni  
Relations at 1-800-752-8570.  
A full schedule of events will be mailed to each  
class member prior to the reunion.*

### Class Contacts:

#### 1968

Don Cowan Jr.  
336-378-5329

#### 1973

Bob Lawing  
336-631-8500

#### 1978

Vickie Cheek Dorsey  
404-841-0046

#### 1988

J. McLain Wallace  
919-937-2200

**Robert J. Ramseur Jr.** (JD '95,  
BA '92) and A. Amanda Long.  
4/12/97

**Conrad Boyd Sturges III** (JD  
'95) and **Cindy Lou King** (JD  
'97). 8/30/97

**Melanie Kirk** (JD '96, BA '92)  
and Martin L. Holton III.  
5/31/97

**Sarah O'Neill Sparbee** (JD  
'96) and Alan Ziegler Thornburg  
(JD '96). 9/13/97

**Mark Edwards** ('94, JD '97)  
and **Elizabeth Jones** (BA '93).  
8/16/97

### Births/Adoptions

**John J. Carpenter** (BA '80, JD  
'84) and **Elizabeth Jones  
Carpenter** (BA '83), Charlotte,  
NC: daughter, Mary Jordan.  
6/8/97

**Lani Hustace George** (JD '87)  
and Phillip George, Evansville,  
IN: daughter, Carol Ann.  
5/20/97

**Lee W. Gavin** (BA '85, JD '88)  
and **Roberta Wood Gavin** (JD  
'88), Asheboro, NC: son,  
Andrew Suiter. 12/19/96

**Mary C. Nolan Hedrick** (BA  
'87, JD '90) and **Michael C.  
Hedrick** (BS '86, MBA '94),  
Greensboro, NC: daughter,  
Meredith Reilly. 9/19/97

**Joseph L. Bell Jr.** (JD '91) and  
**Amy Batts Bell** (BA '84),  
Rocky Mount, NC: son, Forrest  
Jefferson Bell. 6/24/97

**Rob Dickerson** (JD/MBA '91)  
and **Joanne Coman Dickerson**

(BA '88), Winston-Salem: son,  
William Cushman. 6/20/96

**Laura Boyce Isley** (BA '89, JD  
'92) and Philip Isley, Raleigh,  
NC: daughter, Grace Elizabeth.  
6/5/97

**Michelle B. Beischer** (JD '94)  
and **David D. Beischer** (JD  
'94), Durham, NC: son, William  
Dietrich. 4/16/97

**Alice Ellington Hill** (BA '88,  
JD '94) and **Douglas Eric Hill**  
(JD '88), High Point, NC: son,  
Alexander Risten. 8/12/96

**Marc Hunter Eppley** (JD '95)  
and Wendy Eppley, Winston-  
Salem: son, Marc Hunter  
Eppley Jr. 8/19/97

### Deaths

**Samuel J. Gantt Jr.** (JD '41)  
February 2, 1997, Durham, NC

**Robert H. Lacey** (JD '49)  
August 26, 1997, Newland, NC.  
He was a judge in North  
Carolina's 24th District for 20  
years. After he retired from the  
bench in 1995, Gov. Jim Hunt  
appointed him to serve as an  
emergency judge to travel the  
state hearing special cases. He  
was known for helping recover-  
ing alcoholics. In 1979 he helped  
open a substance-abuse counsel-  
ing center in Avery Co. The cen-  
ter was renamed the Robert H.  
Lacey Center in his honor on  
Aug. 8 of this year. He is survived  
by his wife, Faye Lacey; a son,  
Robbie Lacey; 2 daughters, Kathy  
Smith and Debbie Sechrist; and  
a grandson.

**Richard Alexander Williams**  
(BS '47, JD '49) September 23,



1997, Newton, NC. He was an attorney with Waddell, Mullinax, Childs & Williams in Newton, NC. He served as a member of the Wake Forest Board of Trustees from 1978-'81 and 1984-'87 and as a member of the Alumni Council from 1972-75.

**McNeil Watkins** (BS '49, JD '51) June 25, 1997, Wagram, NC

**William Arthur Vaden** (BA '52, JD '53) May 5, 1997, Greensboro, NC

**Granville Alonzo Ryals** (JD '58) May 21, 1997, Wilmington, NC. He practiced law in Wilmington, NC, for 39 years. He was president of the New Hanover Co. Bar Assoc. in 1983-84 and served in the U.S. Army Counterintelligence Corps during WW II. He is survived by his wife, Deloris Crump Ryals; a daughter, Holly Ryals Grubb; a son, Kenneth T. Ryals; and two grandchildren.

**William Vance McCown** (JD '59) February 28, 1997, Tryon, NC. He practiced law in Tryon for 37 years. He is survived by his wife, Ann; their 3 children; and 4 grandchildren.

**Denny Glenn Higgins** (BS '71, JD 75) October 26, 1997, Fayetteville, NC

**Bradley Dennis Opheim** (JD '96) August 14, 1997, Cheshire, CT

*Send information for class notes to: Joshua Else, P.O. Box 7227 Reynolda Station, Winston-Salem, NC 27109-7227. Please help ensure the accuracy of class notes by printing your information and giving complete information of job changes, promotions, etc. For marriage and birth announcements, please include spouse's name.*

## Continuing **LEGAL EDUCATION**

Website: <http://www.law.wfu.edu/cle>  
(336)-758-4550/4551; FAX (336)-758-1687

## Wake Forest University SPRING SCHEDULE 1998

### Practical Legal Ethics

January 9	Live	McKimmon Center	Raleigh
February 13	Video	Ramada Inn Clemmons	Winston-Salem
February 27	Video	Holiday Inn Woodlawn	Charlotte
March 20	Video	Grove Park Inn	Asheville
May 21	Video	Blockade Runner	Wrightsville Beach

### Representing the Small Business

February 19-20	Live	McKimmon Center	Raleigh
February 26-27	Video	Ramada Inn Clemmons	Winston-Salem
March 5-6	Video	Grove Park Inn	Asheville
March 26-27	Video	Holiday Inn Woodlawn	Charlotte

### Workers' Compensation

March 13	Live	McKimmon Center	Raleigh
April 24	Video	The Meeting Place	Winston-Salem
May 15	Video	Grove Park Inn	Asheville
May 22	Video	Blockade Runner	Wrightsville Beach
May 29	Video	Holiday Inn Woodlawn	Charlotte

### Collection/Enforcement of Judgments

April 16-17	Live	McKimmon Center	Raleigh
April 30-May 1	Video	Holiday Inn Woodlawn	Charlotte
May 7-8	Video	Ramada Inn Clemmons	Winston-Salem
June 4-5	Video	Grove Park Inn	Asheville

### Current Employment Law

April 2-3	Live	Loews L'Enfant Plaza	Washington, DC
April 16-17	Live	Grove Park Inn	Asheville, NC
May 21-22	Live	Hilton Resort	Hilton Head, SC
June 25-26	Live	Sheraton Chicago Hotel	Chicago, IL

the CRIMINAL ELEMENT

# Michael Grace

**M**ICHAEL GRACE (JD '77) did not set out to become a criminal defense attorney. "It was sort of thrust upon me," he says. "You gain some reputation, some expertise in an area, and the next thing you know you're a criminal defense lawyer."

That reputation has been earned in a number of high-profile cases. The most publicized of these was the trial of Michael Hayes, who was accused of shooting nine people from the side of a road and killing four of them in 1989. The 1990 trial was the first time this century when a jury returned a verdict of not guilty by reason of insanity in a capital case. Grace, who served as one of Hayes's two attorneys, admits the verdict is still a sensitive topic in Forsyth County.

However, Grace says, for every high-profile case that glamorizes the role of the defense attorney, there are hundreds more that serve only to highlight human misery. "In real life we [defense attorneys] primarily represent the people who committed the crime and are found guilty," he says. "On TV . . . they represent a lot of innocent people."

In many cases, Grace's role is to humanize the defendant, even if he or she committed the crime. "A lot of times good people do bad things because they find themselves in one situation or another," he says. "I often tell



**MICHAEL GRACE:** 'BEING A CRIMINAL DEFENSE LAWYER IS REALLY WHAT PRACTICING LAW IS ABOUT.'

juries that because my client did a monstrous thing, it doesn't mean he's a monster."

Grace says juries and the general public aren't the only ones plagued by misperceptions of the defense attorney's role; his clients are often confused as well. "They are just as affected by what they see on TV as anyone else. They expect the lawyer to do such a good job that a guy in the back of the audience will jump up and say, 'I did it,'" he explains. "That very rarely happens in real life," he adds with a smile.

Grace admits that a lot of times he gets "bone weary from wallowing in the misery," but he still believes the work he does is a crucial element of the legal system. "After doing it for awhile, you grow to realize that being a criminal defense lawyer

is really what practicing law is about for most of us," he says. "That's what we dreamed about when we were young . . . and it hasn't changed much. Those people who defend and fight for the rights of the accused are still pretty much the stalwarts of the legal system."

Grace learned his respect for the legal system while studying under some of the School of Law's legendary professors like Robert E. Lee and James "Jaw" Webster. "I was at Wake Forest at a time when it went from a regional law school to an institution of national prominence," he recalls, a move he credits to the administration of Dean Pasco Bowman and its recognition of the trend towards legal specialization.

But if specialization is the current trend, Grace still

believes in the value of being a good, "old-fashioned" trial attorney. "Kids today want to move into a lot of different areas like environmental law and international law," he says. "When I started law school, the people that finished Wake Forest went on to become the best trial lawyers in North Carolina. If you went to the courtroom and ran into a ball-of-fire lawyer, he was probably a Wake Forest graduate. And that's what I wanted to do."

Grace has achieved that goal, and his reputation now allows him to pick the cases he represents. However, he still adheres to the belief that everyone has the right to the best legal defense possible. He practices what he preaches by serving as the chairman of the Forsyth County indigent screening committee, which screens the applications for court-appointed lawyers, and by continuing to accept some court-appointed work. "It's my duty as a lawyer to be involved and to give a little something back to people who can't afford representation," he says.

That sense of duty was instilled in him during his years at the School of Law. "The professors I studied under really believed in the law," he says. "They felt duty-bound to impart that passion and knowledge to their students, and we benefited from it." ■

—Andrew Waters





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